RECENT IMPORTANT DECISIONS

BANKRUPTCY—"MINING" INCLUDES QUARRYING.—Proceedings were instituted in involuntary bankruptcy against a corporation engaged principally in quarrying slate and manufacturing it into structural and roofing slate on the ground that such a corporation was engaged principally in "mining" within the meaning of § 4 b, of the "Bankruptcy Act," as amended, 1903. *Held,* it was a mining corporation and could be adjudged an insolvent. *Burdick* v. *Dillon et al, In re Matthews Consolidated Slate Co.* (1906), 144 Fed. Rep. 737.

The contention was that this company was engaged principally in quarrying, which is not included in the word "mining" in § 4 b of the statute. This section, so far as important, reads: "Any corporation engaged principally in manufacturing, 'mining,' etc., owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt." In passing upon this question the court said: "We are of the opinion that Congress used the words mining and manufacturing in their broad sense; * * * * ; that, for any of the purposes of Congress in passing the bankruptcy act, distinction between the classes of minerals and methods of working are immaterial; and that an attempt to distinguish between 'mining' and 'quarrying' would lead to no useful results." The court undoubtedly came to the proper conclusion. COLLIER ON BANKRUPTCY, p. 32, says, "as a rule the statute, as an entirety, as well as its sections, other than Sec. 3, are liberally construed." Such, also, is the opinion in *White Mountain Paper Co.* v. *Morse & Co.,* 127 Fed. 643, 62 C. C. A. 369, and *Francis* v. *Valentine Co.,* 1 Am. Ban'r R. 372, 89 Fed. 691. The following cases show the liberal construction given to other terms of § 4 b. *In re San Gabriel Sanatorium Co.,* 2 Am. Ban'r R. 401, 95 Fed. 271; *In re Morton Boarding Stables,* 5 Am. Ban'r 763, 108 Fed. 791. Again, Collier on p. 58, says: "the meaning of the word (mining) is, undoubtedly, the common one and a company which is engaged in taking from the earth any mineral or natural product * * * , may, hereafter, be petitioned against." The case of *Marvel* v. *Merritt,* 116 U. S. 11, 6 Sup. Ct. 207, 29 L. Ed. 550, was cited as upholding the defendant's contention, but it merely decided the term "mineral" in the customs statute was used in a popular sense. As far as it had any bearing on this case it was repudiated by *Northern Pacific Ry. Co.* v. *Soderberg,* 188 U. S. 526, 23 Sup. Ct. 365, 47 L. Ed. 575. That the term mining in its common acceptation includes quarrying, see, *Midland Ry. Co.* v. *Robinson,* 15 App. Cas. 19; *Midland Ry. Co.* v. *Haunchwood,* 20 Ch. Div. 552; *Hext* v. *Gill,* 7 Ch. App. 699; *Armstrong* v. *Lake Champlain Granite Co.,* 147 N. Y. 485, 42 N. E. 186, 49 Am. St. Rep. 683.

BANKRUPTCY—PERSONS ENTITLED TO OPPOSE DISCHARGE.—A bankrupt, seeking a discharge, was found to have obtained property on credit from the seller on a materially false statement in writing made to the seller by the bankrupt for the purpose of obtaining the property on credit, but the debt had

been satisfied before the proceedings in bankruptcy were instituted. *Held,* that a creditor, other than the one defrauded, was entitled (under the Bankruptcy Act, as amended Feb. 5, 1903), to oppose the discharge. *In re Harr* (1906), 143 Fed. Rep. 421.

This case is interesting because it is the first time this part of the statute has been passed upon in a reported case. § 14 b, 3, of the Bankruptcy Act provides that the court may discharge the bankrupt unless he has "obtained property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit. It was contended that this action could not be maintained because the debt, incurred by fraud, had been fully discharged before the proceedings in bankruptcy were instituted, and also that only the party defrauded could object to the discharge, but the court said "in order to sustain this contention the court would have to interpolate after the word 'person' the following: 'who is a creditor of the bankrupt at the time of his discharge.'" COLLIER ON BANKRUPTCY (Ed. 1905), p. 171, in discussing this section says: "In effect, the objection means, that where a creditor has been defrauded * * * , he has the option of interposing a bar to a discharge affecting all debts, or of permitting the discharge to be granted and then asserting his claim on after-acquired property on the ground that his claim is not affected by the discharge." The court's construction of this section would seem to be more in accordance with the generally liberal interpretation of the statute than is Mr. Collier's, which would limit the right to plead the misrepresentation in bar, to the creditor defrauded. The second remedy named by him is given by § 17 of the act. See, *Forsythe* v. *Vehmeyer,* 177 U. S. 177, 20 Sup. Ct. 623, 44 L. Ed. 723, 3 Am. Ban'r R. 807.

BANKS AND BANKING—RIGHT OF DRAWER OF CHECK TO STOP ITS PAYMENT. —On presentation of a check for payment it was refused by defendant bank on the ground that the drawer of the check had ordered it held up because it had been obtained by fraud and there had been a failure of consideration. Defendant bank had sufficient funds of the drawer on hand to meet the check at the time of presentation; in this action by a bona fide holder, *Held,* a check on a bank operates, from the moment of delivery to the payee as an assignment "pro tanto" of the drawer's funds in bank, and so it is not essential that the drawee bank shall accept the check in order to fix upon it liability to pay the checkholder and to entitle the holder to sue for non-payment. Hence the drawer of this check could not countermand its payment when the check had passed into the hands of a "bona fide" holder. *Loan and Savings Bank* v. *Farmers' and Merchants' Bank* (1906), — S. C. —, 54 S. E. Rep. 364.

The weight of authority is overwhelmingly against this doctrine, which has been harshly criticised by both judges and text-writers. ZANE ON BANKS AND BANKING, § 147. Since the adoption of the Negotiable Instruments Law by Kentucky (1904) and Nebraska (1905) the only states holding to this doctrine are South Carolina, *Simmons* v. *Bank,* 41 S. C. 177; *Leaphard* v. *Bank,* 45 S. C. 569; and Illinois, *Munn* v. *Burch,* 25 Ill. 21; *Gage Hotel Co.* v. *Union Nat. Bank,* 171 Ill. 531; and possibly Texas, *First Nat. Bank* v.